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JAMES M. McKENNEY,
Clerk.

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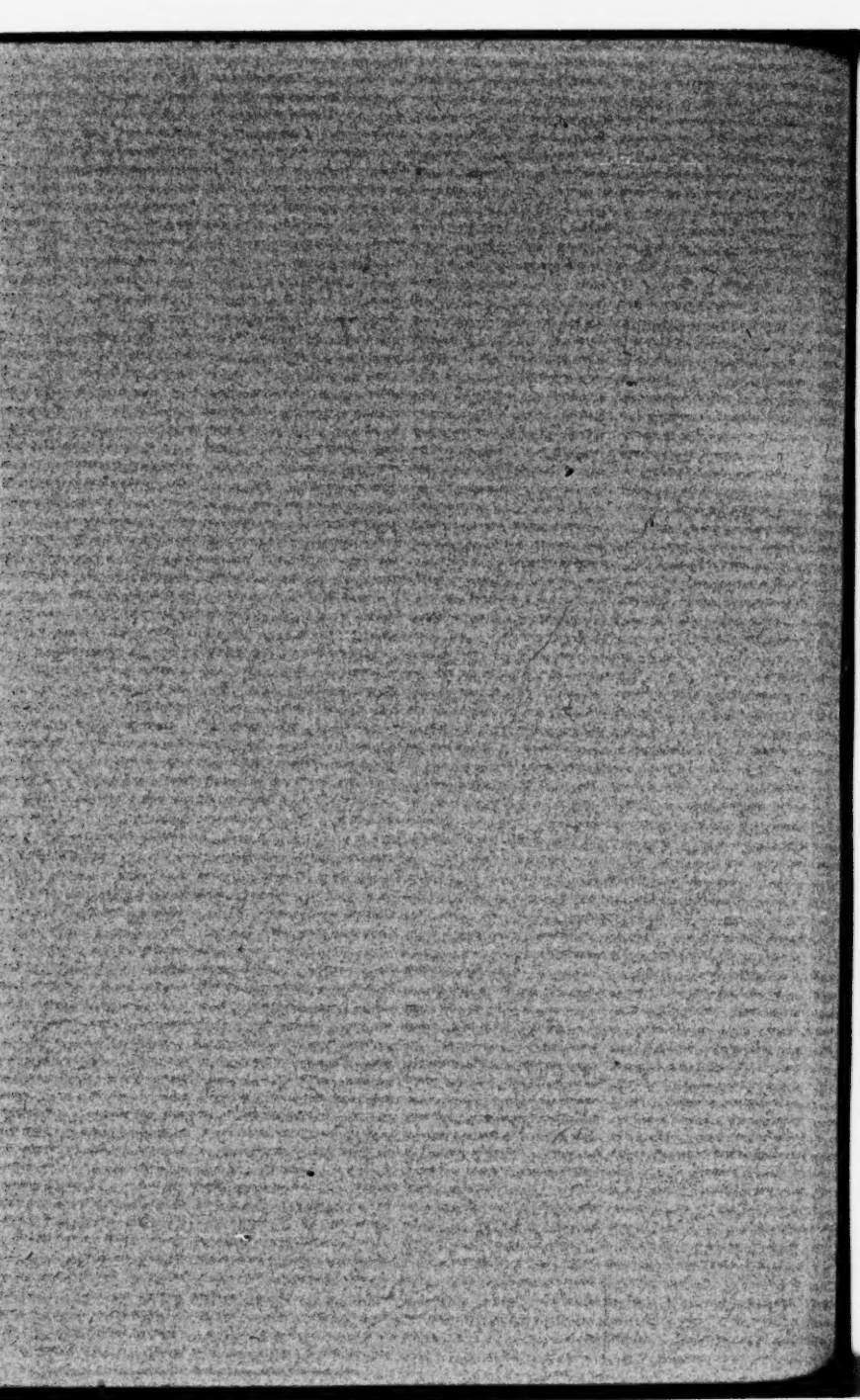
IN THE

Supreme Court of the United States

OCTOBER TERM, 1890.

PETITION FOR WRIT OF CERTIORARI requiring the Circuit Court of Appeals for the Ninth Circuit to certify to the Supreme Court for its review and determination the case of THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK, a corporation, PLAINTIFF IN ERROR, vs. GEORGE E. HILL, ELLEN KELLOGG HILL, EUGENE C. HILL, by their guardian, EREN SMITH, and ELIZA MAUD HILL, in her own behalf, DEFENDANTS IN ERROR.

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TO THE HONORABLE, THE SUPREME COURT OF THE UNITED STATES.

The PETITION of THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK, a corporation, respectfully shows to this Honorable Court as follows :

L.

That your petitioner is a mutual life insurance com-

pany, created and chartered under and by virtue of an act of the Legislature of the State of New York of April 12th, 1842, entitled, "An Act to incorporate The Mutual Life Insurance Company of New York," and a citizen of said State, with its principal office in the City of New York.

That in the year 1876, the Legislature of the State of New York, enacted a general statute entitled : "An act regulating the forfeiture of life insurance policies," (Laws 1876, Chap. 341) as follows :

AN ACT regulating the forfeiture of life insurance policies.

Passed May 15, 1876.

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS :

SECTION 1. No life insurance company doing business in the State of New York shall have power to declare forfeited or lapsed any policy hereafter issued or renewed, by reason of non-payment of any annual premium or interest, or any portion thereof, unless a notice in writing, stating the amount of annual premiums or interest due and when due on such policy, and the place where said premium or interest may be paid, shall have been duly addressed and mailed by the company issuing such policy to the insured, postage paid, at his or her last known post office address, not less than thirty nor more than sixty days next before such payments become due, according to the terms of such policy.

SEC. 2. The affidavit of any officer, clerk or agent of the company that the notice to the assured, provided for in Section 1, has been duly addressed and mailed by the company issuing such policy to the assured, shall be

presumptive evidence of such notice having been duly given.

SEC. 3. This act shall take effect immediately.

This statute was amended by the following general statute of 1877 :

CHAP. 321.

AN ACT to amend chapter three hundred and forty-one of the laws of eighteen hundred and seventy-six, entitled, "AN ACT regulating the forfeiture of life insurance policies.

Passed May 23d, 1877.

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS :

SECTION 1. Section one of chapter three hundred and forty-one of the laws of eighteen hundred and seventy-six, entitled, "An Act regulating the forfeiture of life insurance policies, is hereby amended so as to read as follows :

" Sec. 1. No life insurance company doing business in the State of New York shall have power to declare forfeited or lapsed any policy hereafter issued or renewed by reason of non-payment of any annual premium or interest, or any portion thereof, except as hereinafter provided. Whenever any premium or interest due upon any such policy shall remain unpaid when due, a written or printed notice stating the amount of such premium or interest due on such policy, the place where said premium or interest shall be paid, and the person to whom the same is payable, shall be duly addressed and mailed to

the person whose life is assured, or the assignee of the policy, if notice of the assignment has been given to the company, at his or her last known postoffice address, postage paid by the company, or by an agent of such company or person appointed by it to collect such premium. Such notice shall further state that unless the said premium or interest then due shall be paid to the company or to a duly appointed agent or other person authorized to collect such premium within thirty days after the mailing of such notice, the said policy and all payments thereon will become forfeited and void. In case the payment demanded by such notice shall be made within the thirty-days limited therefor, the same shall be taken to be in full compliance with the requirements of the policy in respect to the payment of said premium or interest, anything therein contained to the contrary notwithstanding ; but no such policy shall in any case be forfeited or declared forfeited or lapsed until the expiration of thirty days after the mailing of such notice. Provided, however, that a notice stating when the premium will fall due, and that if not paid the policy and all payments thereon will become forfeited and void, served in the manner hereinbefore provided, at least thirty and not more than sixty days prior to the day when the premium is payable, shall have the same effect as the service of the notice hereinbefore provided for."

If this New York statute governed the policy *which we deny*, then the above act of 1877 governed the premiums due April, 1887, to December, 1889, the *second*, and subsequent premiums, none of which were paid. The death was on December 4, 1890.

That in an act of the Legislature of the State of Washington entitled "An act relating to foreign corporations and to repeal certain laws in connection therewith, ap-

proved March 28th, 1890, the following provisions are contained :

“ SECTION 1. That any corporation incorporated under the laws of any state or territory in the United States, or of any foreign country, state or colony, for any of the purposes for which domestic corporations are authorized to be formed under the laws of this state, shall have full power and it is hereby authorized to sue and to be sued in any court having competent jurisdiction ; to acquire, purchase, hold, mortgage, sell, convey or otherwise dispose of in the corporate name, all real estate or personal property necessary or convenient to carry into effect the objects and purposes of its corporation, and also any interest in real estate by mortgage or otherwise due to, or loans made by such foreign corporations within the boundaries of this state, either prior to or after the passage of this act, and generally to do and perform every act and transact every kind of business within this state, in the same manner and to the same extent as corporations incorporated and organized under the laws of this state, are authorized to do under the laws of this state, by a compliance with all the conditions prescribed by the second and third sections of this act.”

That prior to the 29th day of April, 1886, your petitioner was transacting business in the territory, now state, of Washington, and in compliance with the requirements of such statute had filed and recorded in the office of the Secretary of said State, a duly certified copy of its charter, and had also constituted and appointed F. L. Stinson, residing at Seattle in said state, its agent, that being the place where the principal business of your petition was carried on in said state.

II.

Your petitioner states that prior to the 29th day of April, 1886, and until his death December 4th, 1890, one George Dana Hill resided at said City of Seattle, and was a citizen of the State of Washington.

That on the 28th day of April, 1886, the said George Dana Hill, at Seattle, made to your petitioner the usual application in writing for a policy of life insurance upon his life, in the sum of twenty thousand dollars That said application, after enumerating the usual statements and answers as to residence, occupation, place of business, nativity and other personal matters, contained the following paragraph :

“ And it is agreed that there shall be no contract of insurance until a policy shall have been delivered and issued by said company, and the first premium thereon paid while the person proposed for insurance is in the same condition of health described in this application ; and that if said policy be issued, the declarations, agreements and warranties herein contained, shall be a part thereof ; and the contract of insurance when made, shall be held and construed at all times and places to have been made in the City of New York.”

That after signing such application said George Dana Hill at Seattle delivered it to the said F. L. Stinson, the petitioner's agent, who transmitted the same by mail to Andrew B. Forbes at San Francisco, California, the General Agent of your petitioner in the State of California, where the principal office of petitioner's company on the Pacific Coast was situated, and the said Forbes mailed the said application to your petitioner at New York City. Upon said application your petitioner executed its policy of life insurance to said George Dana Hill at New York City,

bearing date April 29th, 1886, and forwarded the same by mail to said Forbes, the General Agent at San Francisco, who mailed the same to said agent Stinson at Seattle, Washington, and said George Dana Hill at Seattle, shortly after that date, paid the first annual premium of Eight Hundred and Fourteen Dollars to said agent of your petitioner, and at the same time and place your petitioner, through its said agent delivered the policy to said George Dana Hill. The following, excepting the provisions of the contract not in any wise affecting this case, is substantially a copy of said policy of insurance :

“ No. 281470 A.

THE MUTUAL LIFE INSURANCE COMPANY OF
NEW YORK.

Age 46 years.

Amount \$20,000.

In consideration of the application for this policy which is hereby made a part of this contract, The Mutual Life Insurance Company of New York promises to pay at its home office in the City of New York, unto Ellen Kellogg Hill, wife of George Dana Hill of Seattle, in the County of King, Washington Territory, for her sole use, if living, in conformity with the statute, and if not living, to such of the children of their bodies as shall be living at the death of the said wife or to their guardian, for their use, twenty thousand dollars (\$20,000) upon acceptance of satisfactory proofs at its said office, of the death of the said George Dana Hill during the continuance of this policy, upon the following condition ; and subject to the provisions, requirements and benefits stated on the back of this policy, which are hereby referred to and made a part hereof.

The annual premium of eight hundred and fourteen dollars (\$814.00) shall be paid in advance on the delivery of this policy, and thereafter to the company, at its home office in the City of New York, on the twenty-ninth day of April in every year during the continuance of this contract.

In witness whereof the said The Mutual Life Insurance Company of New York has caused this policy to be signed by its president and secretary, at its office in the City of New York, the twenty-ninth day of April, A. D. one thousand eight hundred and eighty-six.

RICHARD A. McCURDY,
President.

W. J. EASTON,
Secretary.

“ Provisions, Requirements and Benefits.

“ Payment of Premiums.—Each premium is due and payable at the home office of the company in the City of New York, but will be accepted elsewhere when duly made in exchange for the company's receipt, signed by the president or secretary. Notice that each and every such payment is due at the date named in the policy is given and accepted by the delivery and acceptance of this policy, and any further notice required by any statute, is thereby expressly waived. That part of the year's premium, if any, which is not due and is unpaid at the maturity of this contract shall be deducted from the amount of the claim. If this policy shall become void for non-payment of premium, all payments previously made shall be forfeited to the company except as hereinafter provided.”

That shortly before the 29th day of April, 1887,

when the second annual premium on the policy became due, petitioner placed renewal receipt in the hands of its agent F. L. Stinson, at Seattle, and authorized him to deliver the same to the insured upon payment of the premium, and both orally and in writing notified the said George Dana Hill of that fact, and also in the same manner notified him of the date when the *second annual* premium would fall due, namely, April 29th, 1887, and the amount thereof, Eight Hundred and Fourteen Dollars. That on the 29th day of April, 1887, the said agent presented the renewal receipt to said George Dana Hill at Seattle, and demanded payment of the premium then due, but the insured, with full personal knowledge of the amount of the premium and of its being due on said date, and of the offer of the renewal receipt upon such payment, refused to make payment, and after subsequent requests of payment by the agent and offer of such renewal receipt in exchange for the same, still made refusal and informed the petitioner that he was unable to pay the premium and did not intend to make payment of it, or of any premium thereafter to accrue on the policy, but on the contrary he intended the policy to become lapsed and forfeited for want of payment of the premium then due, or any future premium, and thereafter such receipt was returned to your petitioner's principal office at New York, and your petitioner caused the lapsing and forfeiture of such policy to be entered upon its books for default in the payment of said second annual premium. That payment has never been made or tendered the petitioner of said premium, or any part thereof, nor of any of the subsequent annual premiums falling due before the death of the insured, December 4th, 1890.

III.

Your petitioner further states that after the death of the insured at Seattle, December 4th, 1890, action was commenced by the defendants in error to recover Twenty Thousand Dollars, the amount of the policy, with interest, in the United States Circuit Court for the District of Washington, Northern Division, in their complaint setting forth the policy of insurance and alleging compliance with its terms on the part of the insured during his life-time. Your petitioner in said action admitted the execution of the policy, but denied the same was executed in the State of New York or elsewhere than in the State of Washington. controverted compliance on the part of the insured or the plaintiffs in said action with the terms and conditions of the policy, and alleged affirmatively that the said George Dana Hill had failed, neglected and refused to pay the premium due on said policy April 29th, 1887, or any part of it, or anything save the first annual premium paid at the time of delivery of the policy. Your petitioner also pleaded that subsequent to the delivery of said policy, by agreement between your petitioner and George Dana Hill, during his life-time, it was mutually agreed the contract of insurance should be and it was waived, abandoned and rescinded, and the parties waived and abandoned all their respective rights and obligations under the policy.

And your petitioner, for a further defense, averred that at the time of issuing the policy and prior and subsequent thereto, your petitioner was transacting its life insurance business in the territory, now state, of Washington, with its principal office and agent in the state at Seattle. That prior to the 20th day of April, 1886, said George Dana Hill, who was at that time a resident of Seattle, and a citi-

zen of the State of Washington, made application in writing to your petitioner for a policy of life insurance. That the application contained the following provision :

“ And it is agreed that there shall be no contract of insurance until a policy shall have been issued and delivered by the said company and the first premium thereon paid while the person proposed for insurance is in the same condition of health described in said application.”

That the agent of your petitioner at Seattle received the application, and caused the same to be mailed to the agent at San Francisco, by whom it was transmitted to your petitioner in the City of New York, and that on the 29th day of April, 1886, your petitioner transmitted the policy of insurance, through its said agents, to the City of Seattle, where on or about the 15th day of May, 1886, it was delivered to said George Dana Hill, who in exchange for it then and there paid to defendant the first annual premium of Eight Hundred and Fourteen Dollars.

In said defense it was alleged that the policy contained the following provision :

“ The annual premium of Eight Hundred and Fourteen Dollars (\$814.00) shall be paid in advance on the delivery of this policy, and thereafter to the company, at its home office in the City of New York, on the twenty-ninth day of April in every year during the continuance of this contract.”

And it was further provided in said contract as follows :

“ Each premium is due and payable at the home office of the company in the City of New York, but will be accepted elsewhere when duly made in exchange for the company's receipt, signed by the President and Secretary. Notice that each and every such payment is due at the

date named in the policy is given and accepted by the delivery and acceptance of this policy, and any further notice, required by any statute, is thereby expressly waived."

It was further in said defense alleged that pursuant to the conditions of the policy there became due a premium on the 29th day of April, 1887, of Eight Hundred and Fourteen Dollars, and that the said George Dana Hill and the said Ellen Kellogg Hill, his wife, and each and all of the plaintiffs in the action, failed, neglected and refused to pay the premium, or any part of it, and ever since have continued such neglect and refusal, and that by reason thereof the policy became forfeited on the 29th day of April, 1887, according to the said condition.

As an additional affirmative defense your petitioner pleaded the application for and the execution and delivery of the policy as in the preceding defense, and further alleged that the policy contained the following provision, namely :

" Each premium is due and payable at the home office of said company in the city of New York, but will be accepted elsewhere when duly made in exchange for the company's receipt, signed by the president or secretary."

And that it was, upon the execution and delivery of said policy to the said George Dana Hill, mutually agreed between your petitioner and the said Hill that all annual payments, subsequent to that paid at the delivery of the policy, should be paid by said Hill to the defendant at the City of Seattle, and the defendant's receipt should in exchange for such payment be there delivered to said Hill ; and that in pursuance of said policy and said agreement, shortly prior to and after and on said 29th day of April, 1887, your petitioner, in writing and also personally noti-

fied and informed the said George Dana Hill at said City of Seattle, that the premium of Eight Hundred and Fourteen Dollars, necessary to be paid on said policy for the continuance of the same, was due and payable on said 29th day of April, 1887, and on said date said defendant duly presented the receipt of your petitioner duly signed by its president and secretary, for the said premium falling due April 29th, 1887, and tendered the same to said George Dana Hill upon payment of the said premium, and that said Hill being fully informed and advised, refused to make such payment and receive said receipt therefor, and then and there informed your petitioner that he, the said George Dana Hill, was unable to pay said premium and did not intend to make payment thereof, or of any premium thereafter to accrue upon said policy of insurance, but on the contrary intended to allow the said policy to lapse and become forfeited for non-payment of the said premium, or any premium afterward accruing on such policy, and that your petitioner then and there and ever since relying upon said conduct and representations of said George Dana Hill was thereby induced to and did declare the said policy and contract of insurance forfeited and abandoned, and in good faith relying upon said conduct and representations on the part of the said George Dana Hill, your petitioner was induced to and did fail and abstain from giving or mailing any notice, whether prescribed by statute or otherwise to the said George Dana Hill, or any person interested in said policy, concerning the payment of any premium thereon.

IV.

Your petitioner further represents that the plaintiffs in said action in said Circuit Court demurred to the answer

of your petitioner and to each of the separate defenses therein contained for the reason and upon the ground that the same do not state facts sufficient to constitute a defense to the cause of action in the complaint pleaded, and the demurrer was sustained to the whole of your petitioner's answer, and separately to each of the defenses therein pleaded, to which rulings of the Court your petitioner duly excepted. And your petitioner, electing to stand upon its answer in said Circuit Court, upon motion of the defendants in error against the exception of your petitioner, said court entered its judgment in favor of defendants in error and against your petitioner, in the sum of Twenty-four Thousand Eighty-six and 61-100 Dollars, with interest thereon from the date of such judgment, together with the costs of the action. That your petitioner, feeling aggrieved by the judgment of said Circuit Court, duly and within six months after the rendition of such judgment, applied to the Circuit Court of Appeals for the Ninth Circuit for a Writ of Error for the correction of the manifest errors that happened, to the damage of your petitioner, as shown by the records and proceedings, as well as by the judgment in said cause ; and a writ of error was duly issued out of said Circuit Court of Appeals. The return of such writ being duly made to said Circuit Court of Appeals, the same came on for hearing before said Court, and thereafter, and on the 2d day of October, 1899, the said Circuit Court of Appeals rendered its opinion in writing, affirming the judgment of the said Circuit Court.

V.

That pursuant to its written opinion, said Circuit Court of Appeals has entered its judgment affirming the judgment of the Circuit Court, and remanding the cause to said Court for the execution thereof.

VI.

Your petitioner states that upon the face of the record of said cause, as the same is on file and was presented in said Circuit Court of Appeals by the Assignment of Errors made and presented by your petitioner in said Circuit Court of Appeals, the following questions or propositions were and are in issue, and involved in the adjudication of said case :

FIRST.

Whether the contract of life insurance on which the action was brought is one entered into under and governed by the laws of the State of Washington or the laws of the State of New York, when the policy was delivered and the first premium paid in the State of Washington, and whether such statute of the State of New York of 1877, requiring notice to be given as therein prescribed, applies to the State of Washington at all.

SECOND.

Whether actual knowledge, possessed and acted upon by the insured at the time the premium fell due, obviated the necessity of the statutory notice prescribed by said statute of the State of New York.

THIRD.

Whether if such statute does apply to the case, the parties could and did waive the notice therein prescribed by a subsequent agreement entered into in Washington.

FOURTH.

Whether it was competent for the Legislature of the State of New York, under the said general statute of 1877, to alter and amend the charter of your petitioner, and if so, whether your petitioner, being a corporation created and chartered under a special act of the Legislature of the State of New York, was intended to be included and affected by said general act.

FIFTH.

Whether it was or is the meaning and intent of the Legislature of the State of New York, that the act of 1877, should apply to a business transaction taking place in the State of Washington, as disclosed by the record in this case, and whether said statute follows said corporation beyond the limits of the State of New York as a part of its charter, or whether the same is only operative in the State of New York upon corporate business there transacted.

SIXTH.

Whether the public policy of unrestricted liberty of contract conferred by its Legislature upon foreign corporations transacting business in the State of Washington, should be a controlling reason for determining the contract a Washington contract, and one not affected by the statute of New York.

SEVENTH.

If it should be held that the general statute of New

York of 1877, respecting premium notices applies to this case, whether the failure to give the notice prescribed by such statute can operate to render your petitioner liable for a greater measure of insurance than the amount of the premium paid will purchase.

EIGHTH.

In the event it should be held the statute of New York of 1877, as amended applies to this case, whether the penal consequences of failing to give the notice prescribed of premium falling due, will relieve the insured from paying further premiums and keep the policy alive as if such premiums had been paid.

NINTH.

Whether the failure to give notice of a particular premium maturing will have the effect of keeping the policy alive, notwithstanding subsequent premiums have not been paid.

TENTH.

Whether, although your petitioner failed to give the notice under the statute of New York of 1877, and the premiums due on each of the following four years preceding the death of the insured remained unpaid, it would be an unlawful appropriation of your petitioner's property without consideration, to require your petitioner, in case of the death of the insured, to pay the amount of the policy.

ELEVENTH.

In the event the statute of New York of 1877, should be held to apply, whether an action can be brought to recover the amount of the policy until payment has been made or tendered of the premiums past due and unpaid.

TWELFTH.

Whether, in event it is held that the Statute of New York applies, it is a law relieving the insured from the consequences of a breach of his contract; or whether it enters into the being and charter of the Mutual Life Insurance Company, and becomes a limitation upon its powers of contracting outside the State of New York.

THIRTEENTH.

Whether it was competent for the Mutual Life Insurance Company and the insured to enter into a mutual agreement in the State of Washington subsequent to the delivery of the policy, by which they mutually agreed to rescind and terminate the policy and each relieve the other from all its obligations and benefits.

FOURTEENTH.

Whether by the payment of the first annual premium and failing to pay all subsequent premiums, action can be maintained until payment or tender is made of the defaulted premiums.

FIFTEENTH.

Whether, in this action, pleading only the policy of insurance and of performance by the insured of the terms of the contract, a recovery can be had when plaintiff admits non-payment of all premiums subsequent to the first up to the death of the insured.

SIXTEENTH.

Whether, in this action, based upon the policy of insurance and the performance of its conditions, the plaintiff can admit the non-payment of the premiums subsequent to the first and recover against the defendant because the defendant fails to show the giving of notice pursuant to the statute of New York.

SEVENTEENTH.

Whether it is not a fatal departure from law to law for a plaintiff alleging as his cause of action a policy of insurance and the compliance with its terms and admitting the defense of non-payment of premiums to recover judgment because the defendant has failed to show compliance with the unpleaded statute of New York in regard to mailing notice of the due date of premium.

EIGHTEENTH.

Whether under the charter of the defendant company and the Statutes of the State of Washington and the State of New York and the matters set forth in the record herein there is any liability on the part of the company.

VII.

Your petitioner states that it has issued and now has outstanding in the different Territories and States of the Union many life insurance policies, and has entered into such contracts with large numbers of the residents and citizens of the State of Washington, and other life insurance corporations, created and organized under the laws of the State of New York, have entered into and now have outstanding numbers of similar policies in such States and Territories. That at the time of rendering its opinion in this case, the Honorable Circuit Court of Appeals rendered similar opinions and upon substantially the same questions in three other cases wherein your petitioner is plaintiff in error, and that another case in which your petitioner is plaintiff in error has been submitted to said Circuit Court of Appeals, involving the same questions, the said cases decided and pending aggregating over eighty-six thousand dollars (\$86,000), and a number of similar cases are now pending for decision in the United States Circuit Court for the District of Washington. That in view of the large amount of money involved in this litigation and the other similar causes, and in view of the difference in judicial opinions respecting a number of the questions involved in the case, your petitioner represents that the gravity of the matters in this case is such that they should be authoritatively and finally adjudicated by this Honorable Court upon a full and fair presentation of the merits of the case (or such of them as the Court may direct), on the part of your petitioner and the said defendants in error, George E. Hill, Ellen Kellogg Hill, Eugene C. Hill, by their guardian, Eben Smith, and Eliza Maud Hill in her own behalf.

That the Phinney case (No. 12 on calendar of this Court) against your petitioner involves the same general questions.

VIII.

Your petitioner states that a certified copy of the entire record in said case in the said Circuit Court of Appeals is herewith furnished and hereto annexed as a part of this application, in conformity to Rule 37 of this Honorable Court relating to cases in the Circuit Court of Appeals, and the same is marked "Exhibit A."

WHEREFORE, Petitioner respectfully prays that a writ of certiorari may be issued out of and under the seal of this Honorable Court, directed to the United States Circuit Court of Appeals for the Ninth Circuit, certifying the said court to certify and send to this Court on a day certain to be therein designated, a full and complete transcript of the record and all proceedings in said Circuit Court of Appeals in said cause therein entitled "The Mutual Life Insurance Company of New York, a corporation, plaintiff in error, *vs.* George E. Hill, Ellen Kellogg Hill, Eugene C. Hill, by their guardian, Eben Smith, and Eliza Maud Hill in her own behalf, defendants in error, No. 518," to the end that the said cause may be reviewed and determined by this Court as provided by Section 6 of an Act of Congress, entitled: "An Act to Establish Courts of Appeals and to Define and Regulate in Certain Cases the Jurisdiction of the Courts of the United States and for Other Purposes," approved March 3d, 1891, and that your petitioner may have such other and further relief or remedy in the premises as to this Court may seem appropriate and in conformity to said act, and that the said judgment of the said

Circuit Court of Appeals in said case, and every part thereof, may be reversed by this Honorable Court.

And your Petitioner will ever pray.

JULIEN T. DAVIES,
EDWARD LYMAN SHORT,
JOHN B. ALLEN,
FREDERIC D. M'KENNEY,
ROBERT C. STRUDWICK,

Attorneys and Counsel for Petitioner.

SOUTHERN DISTRICT OF NEW YORK, }
COUNTY OF NEW YORK, } ss. :

EDW. LYMAN SHORT, being duly sworn, says : That he is one of the attorneys and of counsel for The Mutual Life Insurance Company of New York, the Petitioner above named, and as such has had personal charge for it of the case in the foregoing petition named in the Circuit Court of Appeals for the Ninth Circuit. That he has read the said petition by him subscribed, and that the facts therein stated are true to the best of his information and belief.

EDWARD LYMAN SHORT.

Subscribed and sworn to before me this 18th day of November, A. D. 1899.

ALFRED MACKAY,
[SEAL.] Notary Public,
New York Co.